Mohd Jali bin Haji Ngah (t/a Peranan Pusat Pendidikan dan Pemulihan Anak Yatim dan Cacat Tenggara Asia) v The New Straits Times Press (M) Bhd & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S6-22-358 OF 1987
MOHD NOOR AHMAD J
10 FEBRUARY 1998

***Tort** — Defamation — Libel — Allegations that plaintiff was operating a banned and illegal society and obtaining money from the firms under false pretences — Test applicable*

***Tort** — Defamation — Libel — Defences — Fair comment — Whether comments made were fair — Conditions to fair comment — Test applicable— Whether defendants required to prove every fact in the articles is true*

***Tort** — Defamation — Libel — Defences — Qualified privilege — Whether comments made in good faith and without malice upon a matter of public interest*

The plaintiff claimed damages against the defendants for defamation in respect of two articles appearing in the *Malay Mail* and the *New Straits Times*. The plaintiff is and was at all material times the sole proprietor of and trading as Peranan Pusat Pendidikan dan Pemulihan Anak Yatim dan Cacat Tenggara Asia ('the Pusat'). The first defendant was the proprietor and publisher of the *New Straits Times* and the second defendant was the editor of the two publications. The plaintiff contended that the articles in their natural and ordinary meaning meant and were understood and taken to mean that, inter alia, the plaintiff was operating a banned and illegal society allegedly taking money from firms under false pretence and the plaintiff's business was a bogus operation designed to deceive firms to advertise in his publication. The defendants denied that the words were understood to refer to or were capable of referring to or being understood to refer to the plaintiff. The defendants also denied that the words bore and were understood to bear any of the meaning as contended by the plaintiff. In the alternative, the defendants plead that the articles were fair comment made in good faith and without malice upon matter of public interest, or the articles were published on occasion of qualified privilege.

Held, dismissing the claim:

(1) The test as to whether the impugned words were capable of being, or were in fact, defamatory of the plaintiff is: Whether such words were calculated to expose him to hatred, ridicule or contempt in the mind of the reasonable man or would tend to lower the plaintiff in the estimation of right thinking members of society generally. If the words have such tendency, they could still be defamatory even if they did not really lower a plaintiff in

the estimation of those to whom they were published (see p 778G–H); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 and *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 followed.

Having scrutinized the words in the two articles, the court was satisfied that the impugned words were defamatory of the plaintiff. The gravamens of the complaint in the two articles lay in the allegations that the plaintiff was operating a banned and illegal society and obtaining money from the firms under false pretences (see p 778I).

(2) Regarding the defence of fair comment, it is trite that the comment must be fair. It was clear that the facts stated in the articles were true and the comments were fair. The comments were made in good faith and without malice upon a matter of public interest. Furthermore, the defendant was entitled to the defence of qualified privilege because the defendant was under a legal and moral duty to inform the public about the activities of the Pusat. There is not an iota of evidence of malice on the part of the defendant. Also, by virtue of s 9 of the Defamation Act 1957, the defendants were not required to prove every fact in the articles was true to be entitled to the defence of fair comment. The court was satisfied that the comments expressed in the articles were fair having regard to the facts alleged or referred to in the words complained of as were proved (see pp 779A, F–H and 780E–G).

[Bahasa Malaysia summary

Plaintif menuntut ganti rugi terhadap defendan-defendan untuk fitnah berhubung dengan dua rencana yang diterbitkan dalam *Malay Mail* dan *New Straits Times*. Plaintif adalah dan pada semua masa peniaga tunggal dan berniaga sebagai 'Peranan Pusat Pendidikan dan Pemulihan Anak Yatim dan Cacat Tenggara Asia' ('Pusat tersebut'). Defendan pertama adalah tuan punya dan penerbit *New Straits Times* dan defendan kedua adalah penyunting kedua-dua terbitan. Plaintif menghujahkan bahawa rencana-rencana tersebut dalam makna mereka yang semulajadi dan biasa bermakna dan difahamkan sebagai bermakna bahawa, antara lain, plaintif mengendali sebuah pertubuhan yang dilarang dan pertubuhan dikatakan mengambil wang daripada firma-firma di bawah dakwaan palsu dan perniagaan plaintif adalah suatu kegiatan palsu yang diwujudkan untuk menipu firma-firma supaya mengiklan dalam terbitannya. Defendan-defendan menafikan bahawa perkataan-perkataan itu difahamkan sebagai merujuk kepada atau berupaya untuk merujuk kepada plaintif. Defendan-defendan juga menafikan perkataan-perkataan itu membawa dan difahamkan membawa mana-mana makna seperti yang dihujahkan oleh plaintif. Sebagai alternatif, defendan menghujahkan bahawa rencana-rencana tersebut adalah komen berpatutan yang dibuat dengan suci hati dan tanpa niat jahat atas perkara yang berkepentingan awam, atau rencana-rencana diterbitkan di bawah perlindungan bersyarat.

Diputuskan, menolak tuntutan:

(1) Ujian mengenai sama ada perkataan-perkataan yang dipersoalkan memfitnah plaintif adalah: Sama ada perkataan sedemikian dijangka mendedahkannya kepada kebencian, cemuhan atau penghinaan dalam minda orang yang munasabah atau mungkin akan menyebabkan ahli-ahli masyarakat pada amnya memandang rendah terhadap plaintif. Andainya perkataan-perkataan itu mempunyai kecenderungan demikian, mereka masih boleh memfitnah biarpun mereka tidak benar-benar menyebabkan ahli-ahli masyarakat memandang rendah terhadap plaintif (lihat ms 778G–H); *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 dan *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 diikut.

Selepas meneliti perkataan-perkataan dalam dua rencana itu, mahkamah berpuas hati bahawa perkataan-perkataan yang dipersoalkan memfitnah plaintif. Dasar aduan dalam kedua-dua rencana terletak dalam pengataan bahawa plaintif mengendali pertubuhan yang dilarang dan haram dan menerima wang daripada firma-firma di bawah dakwaan palsu (lihat ms 778I).

(2) Mengenai pembelaan komen berpatutan, adalah mantap bahawa komen mestilah berpatutan. Adalah jelas bahawa fakta-fakta yang dinyatakan dalam rencana-rencana tersebut adalah benar dan komen adalah berpatutan. Komen-komen telah dibuat dengan suci hati dan tanpa niat jahat atas perkara yang berkepentingan awam. Tambahan pula, defendan berhak kepada pembelaan perlindungan bersyarat kerana defendan berada di bawah kewajipan undang-undang dan moral untuk memberitahu masyarakat awam tentang kegiatan Pusat tersebut. Tidak terdapat keterangan apa-apa pun mengenai niat jahat pada pihak defendan. Juga, disebabkan s 9 Akta Fitnah 1957, defendan-defendan tidak dikehendaki membuktikan setiap fakta dalam rencana-rencana adalah benar supaya berhak kepada pembelaan komen berpatutan. Mahkamah berpuas hati bahawa komen-komen yang dinyatakan dalam rencana-rencana tersebut adalah berpatutan dengan mengambil kira fakta-fakta yang dikatakan atau yang dirujuk dalam perkataan-perkataan yang diadu seperti yang terbukti (lihat ms 779A, F–H dan 780E–G).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 165–230.

Cases referred to

Capital and Counties Bank Ltd, The v George Henty & Sons (1881–82) 7 App Cas 741 (refd)

JB Jeyaretnam v Goh Chok Tong [1985] 1 MLJ 334 (folld)

Jones v Skelton [1963] 3 All ER 952 (refd)
Kemsley v Foot & Ors [1952] 1 All ER 501 (refd)
Rajagopal v Rajan [1972] 1 MLJ 45 (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] 2 MLJ 56 (folld)
Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393 (refd)

Legislation referred to

Defamation Act 1957 s 9
Societies Act 1966

Wan Mohd Zam (*Prasad Abraham & Associates*) for the plaintiff.
Lorraine Cheah (*Shearn Delamore & Co*) for the defendant.

Cur Adv Vult

Mohd Noor Ahmad J: The plaintiff claims damages against the defendants for defamation in respect of two articles appearing in the *Malay Mail* on 15 June 1984 ('the first article') and the *New Straits Times* on 8 July 1987 ('the second article').

The plaintiff at all material times is and was the sole proprietor of and trading as 'Peranan Pusat Pendidikan dan Pemulihan Anak Yatim dan Cacat Tenggara Asia' ('the Pusat'). The first defendant is the proprietor and publisher of the *New Straits Times* and the second defendant is the editor of the two publications.

The first article is intituled 'CONNED BY BOGUS SOCIETY: Firms pay money for ads owed to banned group'. It was written in consequence of investigation on information received by the writer on the matter. The plaintiff contends that by the said words in their natural and ordinary meaning or by innuendo the defendants meant and were understood and taken to mean that:

(a) the plaintiff was operating a banned and illegal society allegedly taking money from firms under false pretence thus inputing the plaintiff of criminal behaviour;

(b) the plaintiff was still operating under the auspices of the Federal Territory Association for the Welfare of Orphans and Handicapped Children, a society in which he was involved in 1980 which had been deregistered by the Registrar of Societies for alleged breaches of the Societies Act 1966;

(c) the plaintiff had used the names of well-known personalities to entice firms to advertise in his publication;

(d) the plaintiff's business was bogus as it did not have a permanent address; and

A (e) the plaintiff was under investigation by the police and the Ministry of Welfare.

The second article is captioned 'Bogus advertising men on the prowl', written after a press interview with the police. The plaintiff claims that by the said words in their natural and ordinary meaning or by innuendo the B defendants meant and were understood and taken to mean that:

(a) the plaintiff's business was a bogus operation designed to deceive firms to advertise in his publication;

(b) the plaintiff either by himself, his servants and/or agents attempted to collect payments from advertisements by firms C without actually sending the copies of the publication as evidence;

(c) the plaintiff's business was an illegal one not registered with the Registrar of Societies or the Registrar of Companies;

(d) the plaintiff by himself, his servants and/or agents were in fact D obtaining money from these firms under false pretences;

(e) the plaintiff is out to mislead firms into advertising in his publication;

(f) the sole purpose of the plaintiff's existence is to gain pecuniary advantage by misrepresentation and deception;

E (g) the plaintiff has no premises to conduct its business; and

(h) the plaintiff is carrying out unlawful activities in Malaysia.

The plaintiff asserts that the words in the articles are defamatory of the plaintiff.

F The defendants deny that the words were understood to refer to or were capable of referring to or being understood to refer to the plaintiff. The defendants also deny that the words bore or were understood to bear any of the meanings as contended by the plaintiff or any meaning defamatory of the plaintiff. Further, or in the alternative, the defendants plead that the articles were fair comment made in good faith and without malice upon a G matter of public interest, or the said words were published on an occasion of qualified privilege.

On the evidence, I am satisfied that:

(1) the plaintiff was the President of the Pertubuhan Badan Kebajikan Anak-Anak Yatim dan Cacat Wilayah Persekutuan ('the PWP') which H was registered with the Registrar of Societies. It was deregistered on 2 May 1981;

(2) the plaintiff is the sole proprietor of the Pusat which was registered on 7 January 1983 with the Registrar of Business;

I (3) the PWP was set up for the welfare of orphans and handicapped children in Wilayah Persekutuan. It raised funds by selling space for advertisements to companies in its souvenir programmes which consisted mainly of welcoming addresses by certain dignitaries;

(4) the Pusat also traded in selling space for advertisements to companies in its souvenir programmes which consisted mainly of welcoming addresses by certain dignitaries. Its name is connected with the rehabilitation of orphans and handicapped children because it helps to sell handicraft made by the orphans and handicapped children;

(5) although the souvenir programmes were issued separately by the PWP and the Pusat, the welcoming addresses of most of the dignitaries used by the PWP were re-used by the Pusat in its subsequent issues; and

(6) the plaintiff carried on the activities of the PWP after it was deregistered by collecting or attempting to collect payments from the companies in respect of advertisements sold by the PWP earlier.

It is manisfestly evident that the plaintiff — after the PWP was deregistered — set up the Pusat and collected or attempted to collect payments in the name of the Pusat for advertisements sold by the PWP. This finding of facts is hereinafter referred to as 'such circumstances'.

Whether the words referred to the plaintiff and were defamatory of the plaintiff

The two articles, without doubt, refer to the plaintiff as the Pusat is mentioned therein. It is one of construction of the words complained of and at the same time to determine if they are capable of and in fact defamatory of the plaintiff. The approach to the construction is to consider the meaning such words would convey to ordinary reasonable persons using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extends to any reference or implication from which persons can reasonably draw (see *The Capital and Counties Bank Ltd v George Henty & Sons* (1881–82) 7 App Cas 741; *Kemsley v Foot & Ors* [1952] 1 All ER 501; *Jones v Skelton* [1963] 3 All ER 952, *Rajagopal v Rajan* [1972] 1 MLJ 45; *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393). Whether the impugned words were capable of being or were in fact defamatory of the plaintiff, the test to be considered is whether such words were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally. If the words have such a tendency, they could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published (see *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 and *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56).

Having scrutinized the words in the two articles, I am satisfied that the impugned words were defamatory of the plaintiff in the way that was ascribed by him in paras 5 and 7 of the statement of claim. The gravamens of the complaint in the two articles lay in the allegations that the plaintiff was operating a banned and illegal society and obtaining money from the firms under false pretences. The plaintiff need not rely on innuendo.

Re the defence of fair comment

It is trite that the comment must be fair. It must meet the following conditions:

(a) It must be based on facts contained in or referred to in the publication complained of.

(b) The facts must be sufficiently true to make the comment fair.

(c) If the comment contains an imputation of corrupt or dishonest motives or perhaps any inference of fact, the comment must be shown to be justifiable.

(d) The comment must be such as fairly to be described as criticism.

(e) The comment must represent the honest opinion of the commentator, and be published without malice.

(See *Gatley on Libel and Slander* (8th Ed) para 709).

Re the first article

The first three paragraphs are pertinent, which state:

> Some firms in the city are believed to have fallen victim to a syndicate collecting money on behalf of a banned society.
>
> The syndicate calling itself 'The Significant Role of Education and Rehabilitation Centres of Orphans and Disabled People in South-East Asia' had sent letters to the companies demanding payment for advertisements.
>
> The advertisements were taken by the companies in a souvenir programme published by the Federal Territory Association for the Welfare of Orphans and Handicapped Children in 1980.

By reason of such circumstances, I am satisfied that the facts stated therein are true and the comments are fair and that the intitulement 'CONNED BY BOGUS SOCIETY: Firms pay money for ads owed to banned group' is justified. The writer of the article deposed that he wrote the article after having inquired about the plaintiff at the offices of the Registrar of Societies and the Registrar of Companies and at the Ministry of Welfare Services and the comments by the respective officers were the result of the interviews he had with them. I am also satisfied that the comments were made in good faith and without malice upon a matter of public interest. The fact that he did not inquire about the plaintiff from the Registrar of Business does not affect my findings because I am of the view that he had already made sufficient inquiries under the circumstances.

Re the second article

The first three paragraphs read:

> Bogus advertising canvassers are on the prowl again collecting advertisements for a souvenir programme of a non-existent society for disabled people.
>
> Their activities first came to light about a year ago when they tried to collect money from certain companies which had booked some space in the souvenir programme purportedly for an orphanage here.

Most of the firms had refused to pay as they had not been issued with a copy of the souvenir programme and sought police help. Many of the companies received threats of legal action through the post.

SD2 deposed that he held a press interview which was attended by the writer (SD5). The interview was in respect of reports received from the public during the previous 24 hours, two of which were related to the activities of the Pusat lodged by Low Keng Huat Brothers & Relatives Sdn Bhd and Ampang Park Management Sdn Bhd. The purpose of the interview was to inform, advise and warn the members of the public of such activities which was one of the official duties of SD2. The name of the Pusat was specifically mentioned during the interview. SD3 confirmed that he had made inquiries about the PWP which signed the advertisement contract with Ampang Park Management Sdn Bhd. He also confirmed that he had lodged a police report about two males who attempted to collect money from Ampang Park Management Sdn Bhd under threat of legal action. By reason of such circumstances, I am satisfied that most of the facts stated therein are true and the caption used 'Bogus advertising men on the prowl' is fair comment and justified under the circumstances.

Re defence of qualified privilege

SD5 deposed that he attended the press interview with SD2 and that he and the other reporters present were requested by SD2 to publish on the activities of the Pusat to the public. Based on these facts and the purpose of the interview, I am satisfied that the defendant is entitled to the defence of qualified privilege because SD2 was under a legal and moral duty to inform the public about the activities of the Pusat under such circumstances and the defendants had a moral and social duty to inform their readers about it. There is not an iota of evidence of malice on the part of the defendants and SD5.

By virtue of s 9 of the Defamation Act 1957, the defendants are not required to prove that every fact in the articles is true to be entitled to the defence of fair comment. I am satisfied that the comments expressed in the articles are fair having regard to the facts alleged or referred to in the words complained of as are proved.

Therefore, the plaintiff's claim is dismissed with costs.

Claim dismissed with costs.

Reported by Eugene Lee